

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED

JUL 21 1995

STRATTEC SECURITY
CORPORATION

vs.

GENERAL AUTOMOTIVE SPECIALTY
COMPANY, INC. AND ALL-LOCK CO.
INC.

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Michael N. Milby, Clerk

CIVIL ACTION NO. H-95-1031

PLAINTIFF'S MOTION TO STRIKE THE TESTIMONY OF WILLIAM EISENREICH

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, Strattec Security Corporation ("Strattec"), files this Motion to Strike the Testimony of William Eisenreich and respectfully shows the Court the following:

1. William Eisenreich is the inventor of the resistively coded security system protected by U.S. Patent No. 3,673,467 (the "'467 Patent"). At the preliminary injunction hearing held by this Court on May 8, 1995, Defendants General Automotive Specialty Co., Inc. ("GASC") and All-Lock Co., Inc. ("All-Lock") contended that the '467 Patent is prior art with respect to Strattec's '482 Patent and renders the '482 Patent invalid.

2. Although Defendants clearly knew of Mr. Eisenreich's Patent as early as May 8, they failed to list him either as a fact or expert witness in their list of Expert and Fact Witnesses to be Called by GASC, served on June 9, 1995, or in their Responses to Strattec's Interrogatories, served on June 28, 1995. Defendants also failed to list Mr. Eisenreich in their initial witness list which is required to be included in this Court's Joint Pretrial Order.

3. Defendants did not notify Strattec of their intention to call Mr. Eisenreich until late last week. On Thursday or Friday of last week, Defendants sent to Strattec another witness list to be included in the Pretrial Order which for the first time showed Mr. Eisenreich as a potential witness - the list was stamped "DRAFT" and unsigned.

Denied. limited to his patent.

4. Had Mr. Eisenreich been timely disclosed by Defendants as a potential fact or expert witness, Strattec would have had the opportunity to depose Mr. Eisenreich. Instead, by failing to provide Strattec with adequate advance notice as is required under the Federal Rules of Civil Procedure, as well as the informal, cooperative practice utilized by counsel in this case, Defendants placed on Strattec an unreasonable and very expensive and unfair burden. Contrary to Defendants' actions, Strattec has fully cooperated with Defendants in the discovery process and has given Defendants sufficient time to depose all of the witnesses it intends to call at trial.

5. The surprise addition of Mr. Eisenreich to Defendants' witness list unfairly prejudices Strattec. There is no excuse for Defendants' omissions and Mr. Eisenreich's testimony should be excluded.

5. Additionally, Defendants state in their late designation that "Mr. Eisenreich may testify concerning U.S. Patent No. 3,673,467 and Patent '482, and other matters" which, to date, have not been disclosed to Strattec. There is absolutely no evidence whatsoever that Mr. Eisenreich has any personal knowledge regarding the '482 Patent, or that Mr. Eisenreich is qualified to give an expert opinion with respect to the '482 Patent.

6. Mr. Eisenreich's testimony, if allowed by this Court, should be limited to his factual knowledge of the '467 Patent.

6. Strattec further moves that Defendants be prohibited from calling William Eisenreich without first approaching the bench and obtaining a ruling from the Court, outside the presence and hearing of all jurors, regarding the introduction and admissibility of his testimony. The injection of such matters in the trial of this cause would result in

irreparable prejudice and harm to Strattec, which no instruction by the Court to the jury could cure.

WHEREFORE, PREMISES CONSIDERED, Strattec Security Corporation prays that this Court grant this Motion in all respects.

Respectfully submitted,


Louis Paine

State Bar No. 15416000

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CERTIFICATE OF SERVICE

~~forwarded~~ **FAXED** I hereby certify that a true and correct copy of the foregoing document has been ~~forwarded~~ to counsel for Defendants, George Bishop, George Bishop & Associates, 3000 Smith, Houston, Texas 77006 and Alan Rosenthal, Fish & Richardson, One Riverway, Suite 1200, Houston, Texas 77056 on this 19th day of July, 1995.


Louis B. Paine

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JURY DEMANDED

O R D E R

The Court having considered Plaintiff's Motion to Exclude the Testimony of William Eisenreich GRANTS Plaintiff's Motion.

SIGNED this _____ day of July, 1995.

UNITED STATES DISTRICT JUDGE